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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/731,318	12/06/2000	Steve Paboojian	015225-005420US	1028
21968	7590	08/19/2005	EXAMINER	
NEKTAR THERAPEUTICS 150 INDUSTRIAL ROAD SAN CARLOS, CA 94070			MENDOZA, MICHAEL G	
		ART UNIT		PAPER NUMBER
		3731		

DATE MAILED: 08/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

TWTM

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/731,318	PABOOJIAN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Michael G. Mendoza	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 December 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-4, 13-22 and 31-34 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 13-22 and 31-34 is/are allowed.
- 6) Claim(s) 1-4 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments filed 25 October 2004 have been fully considered but they are not persuasive. The Applicant argues that Watt et al. 3980074 does not disclose an enclosed cavity. However, Watt et al. does teach an enclosed cavity.

**enclosed** [Show phonetics]

adjective

surrounded by walls, objects or structures

<http://dictionary.cambridge.org/define.asp?key=25515&dict=CALD>

2. The combination of the body 4 and the flange 5 combine to surround/enclose a powder inside the container. The claim does not specify that the body is sealed or closed off to the outside environment. Therefore, Watt et al. reads on the limitations of the claim. The independent claims use the claim terminology "comprising". The use of the word "comprising" makes the claim an open ended claim. An open ended claim does not exclude structural limitations such as the openings unless expressively stated.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

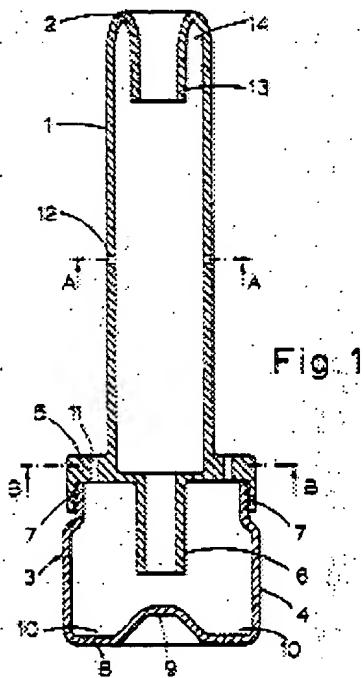
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Watt et al. 3980074.

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5. Watt et al. teaches a receptacle comprising: a receptacle body that defines an enclosed cavity containing powdered medicament (col. 2 ,lines 27-28), wherein the receptacle body has a top end and a bottom end, and wherein the bottom end of the receptacle body includes a raised central region that extends upwardly into the cavity; wherein the receptacle body further comprises at least one curved wall that in combination with the raised central region forms a generally semi-toroidal geometry in the cavity; wherein a portion of the bottom end is flat in geometry; and wherein the receptacle body further includes a tab extending from the cavity (see figures).



***Allowable Subject Matter***

6. Claims 13-22 and 31-34 are allowable over the prior art of record.

The following is a statement of reasons for the indication of allowable subject matter:  
the prior art of record fails to teach or render obvious the overall claimed method for

aerosolizing a powdered medicament, the method comprising: providing a receptacle comprising a receptacle body that defines an enclosed cavity, wherein the receptacle body has a top end and a bottom end, wherein the bottom end of the receptacle body includes a raised central region that extends upwardly into the cavity; and inserting a bottom end of an extraction tube into the cavity such that the bottom end of the extraction tube is aligned with the raised central region and is spaced above the bottom end of the receptacle.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-44963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MM

  
GLENN K. DAWSON  
PRIMARY EXAMINER